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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,912	05/14/2002	Michael O'Connor	42390.P3674R	1765

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EXAMINER

VORTMAN, ANATOLY

ART UNIT	PAPER NUMBER
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2835

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/976,912

**Applicant(s)**

O'CONNOR ET AL.

**Examiner**

Anatoly Vortman

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005 (RCE and Amendment).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32,35-42,45-48 and 52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32,35-42,45-48 and 52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Reissue Application**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this reissue application on 01/19/05 after final rejection, which was mailed on 10/14/04. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/19/05 has been entered.

#### ***Amendment***

2. The submission of the amendment filed on 01/19/05 concurrently with the RCE is acknowledged. At this point claims 20, 28, 30, 35, 36, 37, 45, and 52 have been amended. Claims 33, 34, 43, 44, and 49-51 have been previously cancelled. No other amendments to the pending claims have been made. Thus, claims 1-32, 35-42, 45-48, and 52 are pending in the instant application.

#### ***Oath/Declaration and Claims Rejection-35 USC § 251***

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3. The reissue Oath/Declaration filed on 01/19/05 with this RCE Reissue Application is defective because it incorrectly identifies at least one error, which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. The alleged error as recited in the Oath/Declaration is: “claim 1 as issued includes the excess limitation of the air duct having internal fins. Applicants believe the air duct does not need internal fins for patentability” (see Oath/Declaration, p. 3, lines 2-4). This is not the case, since said claim 1 still recites: “an air duct comprising a housing having internal fins (emphasis added)” (line 6 of the claim). Thus, claims 1-32, 35-42, 45-48, and 52, are rejected under 35 USC § 251, based on a defective Oath/Declaration as explained above.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 35 and 37-42, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter added by the amendment, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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Independent claim 35, as amended, recites: “an inlet port located at or near a hub of the air duct”, and independent claim 37 as amended recites: “an inlet port positioned at a focal point of the air duct”.

The specification of the underlying US/5,966,286 for which reissue is sought, is lacking any teachings about all of the aforementioned limitations, i.e. it does not define neither the “hub” nor the “focal point” of the air duct. The specification only mentions that “fan 16 includes a hub 21 that houses the motor” (column 3, lines 64, 65). Thus, there are no teachings about the air duct comprising “a hub”.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7, 9-14, 16-26, 28-32, 36, 45-48, 52, and, as best understood claims 35 and 37-42, are rejected under 35 U.S.C. 103(a) as being unpatentable over US/5,583,316 to Kitahara et al., (Kitahara).

Regarding claims 1, 2, 5-7, 9,10, 12-14, 16-18, 20, 24-26, 28, 30, 35, 37, 21, 29, 38, 41, 42, and 45-48, Kitahara disclosed (Fig. 72, 73) an apparatus comprising: an air duct (3) comprising a housing made of thermally conductive material (aluminum, column 2, line 28) and (2, 91-94) having internal fins along an internal surface (can be clearly seen on member (2)), said

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air duct dividing and directing divided air flow from an inlet port (92) located near the middle (central point) of said air duct to a first and a second opposing exit ports located at opposite ends of said air duct (these exit ports are: port (98) at the left end of said air duct and another one (not numbered one and marked by arrows) at the opposing right end of said air duct, as shown on Fig. 72), and an air flow generator (a fan) coupled to said inlet port (92) to produce the air flow, said duct coupled directly to a heat generating component (1) (an integrated circuit), but did not disclose a heat transfer means (a heat pipe).

On Fig. 50A, Kitahara teaches another embodiment of the apparatus comprising a heat transfer means (a heat pipe) (55) having an evaporator portion coupled to the heat generating component (1) and a condenser portion coupled to the air duct (2-4).

It would have been obvious to person of ordinary skill in the cooling art at the time the invention was made to supplement embodiment of Fig. 72 and 73 with the heat pipe of embodiment of Fig. 50A in order to adapt the embodiment of Fig. 72 and 73 for the situation when mounting directly on the heat generating component is not possible.

Regarding claims 45 and 52, Kitahara additionally did not disclose that the inlet port situated at a central point of the air duct. Kitahara teaches only that said inlet port is situated near the central point of the air duct as shown on Fig. 72 and 73.

It would have been obvious to one having ordinary skill in the cooling art at the time the invention was made to reposition said inlet port in any desirable way including moving it to the central point of said air duct, in order to enhance the air flow and to augment the rate of heat exchange, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

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Regarding claims 19, 36 and 52, the method steps recited in the claims are inherently necessitated by the device structure as disclosed by Kitahara.

Regarding claims 3, 22, and 39, Kitahara disclosed (Fig. 73) that the housing includes a first plate (2) and a second plate (91) having respective first and second internal surfaces, the first internal surface having a first array of protruding members that constitute internal fins (fins are clearly seen on Fig. 73).

Regarding claims 4, 11, 23 and, 40, Kitahara disclosed (Fig. 47 A, B) first and second plates (65, 66) having protruding fins on the respective internal surfaces.

8. Claims 8, 15, and 27, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitahara in view of US/4,923,000 to Nelson.

Kitahara disclosed all, but resonate cantilever vibrator.

Nelson disclosed (Fig. 1) a resonate cantilever vibrator employed as a cooling fluid flow generator for a cooling fluid.

Since inventions of Kitahara and of Nelson are from the same field of endeavor (cooling), the purpose of the cantilever vibrator disclosed by Nelson would be recognized in the invention of Kitahara.

It would have been obvious to a person of ordinary skill in the cooling art at the time the invention was made to substitute conventional cooling fan of Kitahara with cantilever vibrator of Nelson in order to simplify the device and to enhance the heat transfer characteristics (see Nelson, column 1, lines 1+).

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***Response to Arguments***

9. Applicant's arguments filed on 01/19/05 have been fully considered but they are moot in view of the new grounds of rejection.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anatoly Vortman whose telephone number is 571-272-2047. The examiner can normally be reached on Monday-Friday, between 10:00 am and 6:30 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Lynn Feild can be reached on 571-272-2092. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anatoly Vortman  
Primary Examiner  
Art Unit 2835

AV

